

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF OCTOBER 20, 2004**

REGULAR MEETING

9:00 A.M.

OCTOBER 20, 2004

PRESENT:

COMMISSIONERS:	Jim Bagley, Chairman	Neal Hertzmann, Alternate
	Paul Biane, Vice Chairman	Richard P. Pearson
	Bob Colven	A. R. "Tony" Sedano, Alternate
	Kimberly Cox	Diane Williams
	James V. Curatalo, Alternate	Clifford Young

STAFF: **Kathleen Rollings-McDonald, Executive Officer**
 Clark H. Alsop, Legal Counsel
 Samuel Martinez, LAFCO Analyst
 Debby Chamberlin, Clerk to the Commission

ABSENT:

COMMISSIONERS: **Dennis Hansberger, Alternate**

REGULAR SESSION - CALL TO ORDER - 9:05 A.M.

Chairman Bagley has not arrived so Vice Chairman Biane assumes the Chair. He calls the regular session of the Local Agency Formation Commission to order. Commissioner Young leads the flag salute.

Executive Officer Kathleen Rollings-McDonald reads the announcement requesting that those present who are involved with any of the changes of organization to be considered today by the Commission and have made a contribution of more than \$250 within the past twelve months to any member of the Commission come forward and state for the record their name, the member to whom the contribution has been made, and the matter of consideration with which they are involved. There are none.

APPROVAL OF MINUTES FOR REGULAR MEETING OF SEPTEMBER 15, 2004

Chairman Biane calls for any corrections, additions, or deletions to the minutes. There are none. Commissioner Young moves approval of the minutes as presented, seconded by Commissioner Colven. Chairman Biane calls for a voice vote on the motion and it is as follows: Ayes: Biane, Colven, Cox, Pearson, Young. Noes: None. Abstain: None. Absent: Bagley and Williams.

CONSENT ITEMS

LAFCO considers the items listed under its consent calendar, which Chairman Biane states consists of: (1) approval of the Executive Officer's expense report; (2) approval of payments as reconciled for the month of September 2004 and noting cash receipts; and (3) review of the quarterly financial report for the period July 1 through September 30, 2004. A Travel Claim and Visa Justification for the Executive Officer's expense report, and staff reports for the reconciled payments and the quarterly financial report, have been prepared and a copy of each is on file in the LAFCO office and is made a part of the record by its reference herein. Consent calendar items have been advertised as required by law through publication in The Sun, a newspaper of general circulation. Staff recommendation is that the Commission approve the Executive Officer's expense report and payments as reconciled for the month of September, noting the cash receipts, and take the following actions related to the quarterly financial report: (1) increase Budget Line Item for Fiscal Year 2004-05 Account #1110 General Member Retirement by \$14,796 to a total of \$48,718; (2) decrease Budget Line Item for Fiscal Year 2004-05 Account #6025

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Reserves by \$9,753 to a total of \$34,950.60; and (3) acknowledge increase for Cash Carryover in Fiscal Year 2004-05 of \$5,043 for a total appropriation of \$730,968.

Chairman Biane asks whether there is anyone present wishing to discuss the consent calendar items. There is no one.

Commissioner Pearson moves approval of the consent calendar, seconded by Commissioner Young. Chairman Biane calls for a voice vote on the motion and it is as follows: Ayes: Biane, Colven, Cox, Pearson, Young. Noes: None. Abstain: None. Absent: Bagley and Williams.

CONTINUED ITEMS

CONTINUED FROM AUGUST 18, 2004 -- CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 2934; AND (2) LAFCO 2934 - SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE FOR COUNTY SERVICE AREA 63 - APPROVE STAFF RECOMMENDATION

LAFCO conducts a continued hearing to consider a service review and sphere of influence update for County Service Area 63 (hereinafter "CSA 63"). This hearing is continued from August 18, 2004, and notice of the original hearing was advertised as required by law through publication in The Sun and the Yucaipa News Mirror, newspapers of general circulation in the area. Individual notice of this hearing was provided to affected and interested agencies, County departments and those individuals requesting mailed notice.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald says the original hearing on this service review/sphere of influence update was scheduled for August 18 but it was continued to allow for a more detailed review of the boundaries proposed for CSA 63.

(It is noted that Commissioner Curatalo arrives at 9:07 a.m.)

Ms. McDonald discusses the history of CSA 63, as outlined in the staff report, noting that CSA 63 and the Yucaipa Valley Water District were the primary service providers within the Yucaipa community. She shows on the powerpoint display the three main areas of CSA 63, which are the Crafton Hills area, the area at the intersection of Bryant Street and Highway 38 and the general Oak Glen community. She says that as staff began the review of this District and met with the Special Districts Department, there was no map of the boundaries available and it was assumed that the area related only to the Oak Glen community. After developing the map, she says staff again met with the Special Districts Department staff who indicated that CSA 63 should be isolated to the Oak Glen community. She says staff is recommending changes for the District's sphere of influence as follows: (1) a sphere expansion to include the area with the Oak Glen community, as generally defined by the boundaries of CSS 38 Improvement Zone M and the Oak Glen Community Plan; (2) a sphere reduction to exclude the territory within the Crafton Hills and territory located north of the City of Yucaipa, generally at the intersection of Bryant Street and Highway 38; and (3) affirmation of the balance of CSA 63's sphere of influence.

Ms. McDonald discusses that in preparing the map for CSA 63, it was discovered that two Tax Rate Areas within the District are part of the City of Yucaipa and two are part of the City of Redlands. She explains that three of the four Tax Rate Areas are included in roadways and have no monetary values and says staff will work to correct that situation. However, she discusses that TRA 5053, which has been a part of the City of Redlands since 1992, has a value of \$4.2 million and has provided revenues of approximately \$3,183 annually to CSA 63 through this error. She reports that LAFCO staff will work with the County Assessor and Auditor/ Controller's offices as well as the State Board of Equalization to correct the boundary definitions, and says the City of Redlands and the Special Districts Department should review the return of the revenues inadvertently provided to CSA 63. She notes that a copy of the County's response to the service review survey is attached to the staff report. A summary of the major points of consideration within that response is outlined in the staff report.

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Ms. McDonald says the staff recommendation is listed on page one of the staff report and includes that the Commission: (1) determine that LAFCO 2934 is statutorily exempt from environmental review and direct the Clerk to file a Notice of Exemption within five days; (2) make the findings related to a service review required by Government Code Section 56430 and determine that the sphere of influence for CSA 63 should be amended as outlined, with the balance of the existing sphere confirmed; and (3) adopt LAFCO Resolution No. 2850 setting forth the Commission's findings and determinations.

Commissioner Pearson asks whether the issue of the adjudication of the money related to the Tax Rate Area errors has moved forward and what the impact of that will be. Ms. McDonald responds that staff will clarify the boundaries of CSA 63 and is working with the Assessor and the Property Tax Division of the Auditor's office to correct this. She says the City of Redlands and the Special Districts Department will be asked to notify LAFCO as to how they will resolve the issue of the back revenues. She reports that the transfer of revenues will not create a burden for CSA 63 since it is a financially healthy District.

Commissioner Colven notes that the staff report makes reference to Highway 138 on page one, in Recommendation 2(b), and he says it should be Highway 38. Ms. McDonald notes that correction.

Chairman Biane opens the hearing and asks if there is anyone wishing to speak on this item. There is no one and he closes the hearing.

Commissioner Young moves approval of staff recommendation, seconded by Commissioner Pearson. Chairman Biane calls for a voice vote on the motion and it is as follows: Ayes: Biane, Colven, Cox, Pearson, Young. Noes: None. Abstain: None. Absent: Bagley and Williams.

(It is noted that Commissioner Bagley arrives at 9:16 a.m. He asks Commissioner Biane to continuing serving as Chairman as he will need to leave the hearing soon.)

CONTINUED FROM AUGUST 18, 2004 -- CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 2933; AND (2) LAFCO 2933 - SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE FOR BEAUMONT-CHERRY VALLEY WATER DISTRICT - APPROVE STAFF RECOMMENDATION

LAFCO conducts a continued hearing to consider a service review and sphere of influence update for the Beaumont-Cherry Valley Water District (hereinafter "the District"). This hearing was continued from August 18, 2004, and notice of the original hearing was advertised as required by law through publication in The Sun and the Yucaipa News Mirror, newspapers of general circulation in the area. Individual notice of this hearing was provided to affected and interested agencies, County departments and those individuals requesting mailed notice.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald says this item was originally heard at the August 18 hearing, but she says it was continued so that staff could once again contact representatives of the District and ask for their participation in this process. She reports that a letter was sent to the District asking for its participation and she says a response was received indicating the District had no concerns with this item, other than to again dispute the service area definition of the District. She says that in a conversation with Mr. Butcher, the District's General Manager, staff confirmed that the "service area" identified in the District's letter outlines the actual land holdings of the District within this County, and that the defined jurisdictional boundary within this County is confined to 5.25 acres along Oak Glen Road. She notes that the District will be filing with Riverside LAFCO a reorganization of its boundaries to address all of its sphere territory in San Bernardino County and other areas in Riverside County. She adds that although Riverside LAFCO will be the principal county for that review, staff will be sure this Commission's annexation policies are adhered to and that the appropriate water wholesaler is applied by Riverside LAFCO.

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Ms. McDonald says the staff recommendation is listed on page one of the staff report and includes that the Commission: (1) determine that LAFCO 2933 is statutorily exempt from environmental review and direct the Clerk to file a Notice of Exemption within five days; (2) make the findings related to a service review required by Government Code Section 56430 and determine that the existing sphere of influence for the Beaumont-Cherry Valley Water District should be affirmed as presently configured; and (3) adopt LAFCO Resolution No. 2840 setting forth the Commission's findings and determinations.

Commissioner Pearson asks about removing from the District's sphere the area that is within this County and placing it into the Yucaipa Valley Water District's sphere. Ms. McDonald responds that 90% of the land is owned by the Beaumont-Cherry Valley Water District as the property owner and she says it will never be annexed. She notes that this area is one of the District's primary water sources and says there is no way the Yucaipa Valley Water District could serve that area because of its location, which is in a major wash area. Commissioner Pearson asks whether there have been any discussions between the water wholesaler and the District. Ms. McDonald says a number of discussions are taking place between the San Geronio Pass Water Agency and the San Bernardino Valley Municipal Water District about the overall Calimesa/Yucaipa area and the issue of wholesale water. Commissioner Colven asks whether the San Geronio Watershed Authority is involved in those discussions. Ms. McDonald responds that it is and says other participants working to resolve some water shortage problems in that area include the Cities of Beaumont and Banning and the Beaumont-Cherry Valley and Yucaipa Valley Water Districts.

Chairman Biane opens the hearing and asks if there is anyone wishing to speak on this item. There is no one and he closes the hearing.

Commissioner Young moves approval of staff recommendation, seconded by Commissioner Colven. Chairman Biane calls for a voice vote on the motion and it is as follows: Ayes: Bagley, Biane, Colven, Cox, Pearson, Young. Noes: None. Abstain: None. Absent: Williams.

Chairman Biane states that Item No. 7 is the next item to be considered. He says that Supervisor Postmus called him and asked that this item be delayed until he arrives because he would like to provide testimony. He says if the Commission does not object, they will consider Item 8 and then come back to Item 7. Ms. McDonald says they may wish to take Items 8 and 9 since most of the people present are interested in the City of Hesperia application.

DISCUSSION ITEMS

CONSIDERATION OF: (1) REVIEW OF ENVIRONMENTAL ASSESSMENT REPORT (EAR) NO. 1410 (NEGATIVE DECLARATION FOR PREZONE CHANGE PZC 02-02, STATE CLEARINGHOUSE NO. 2003021122) AND ADDENDUM TO EAR NO. 1410 PREPARED BY CITY OF UPLAND FOR PROPOSED ANNEXATION OF 30.43 ACRES OF THE 343-ACRE COLLEGE HEIGHTS AREA, AS CEQA RESPONSIBLE AGENCY FOR LAFCO 2962; AND (2) LAFCO 2962 - CITY OF UPLAND ANNEXATION NO. 59 - APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider a proposal to annex approximately 27+/- acres to the City of Upland (hereinafter "the City"), initiated by resolution of the City Council. The area is a part of the larger island area commonly known as "College Heights" within the City's southwestern sphere of influence. The area is generally bordered by 11th Street on the north, Benson Avenue and parcel boundaries on the east (existing City boundary), Arrow Route on the south (existing City boundary) and parcel lines on the west. Notice of this hearing has been advertised as required by law through publication in The Sun and the Inland Valley Daily Bulletin, newspapers of general circulation in the area. Individual notice of this hearing was provided to affected and interested agencies, County departments, those individuals requesting mailed notice and landowners and registered voters pursuant to State law and Commission policy.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald shows the

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annexation area on the map provided in the powerpoint display and says this area is a portion of the larger College Heights island. That annexation was defeated by registered voters in November 2003. She says that in March 2004, the Commission authorized the City to submit this application by approving the waiver of the one-year filing restriction. She discusses that the City's intent in submitting this application is: (1) to include lands within its jurisdiction that it recently purchased from the County Flood Control District on which it intends to build a new animal control shelter; and (2) to provide a logical service boundary which includes properties to which it is currently providing sewer service through out-of-agency service contracts. She states that the area is a mix of commercial and vacant lands and discusses the surrounding land uses, as outlined in the staff report. She highlights some of the services to be provided by the City, as outlined in the City's Plan for Service and summarized in the staff report. She explains that water service is provided by the City of Upland and that many of the developed properties already receive sewer service from the City through out-of-agency service contracts. She points out that upon annexation, sewer rates will be reduced by one-third and that water rates will be reduced to in-City rates, rather than 1½ times the in-City rate which is currently paid by those in the County. She says the only financial effect to existing and future business owners is the imposition of City business license fees.

Ms. McDonald says that the County Fire Department continues to express concern about the continuing erosion of funding for County Service Area (CSA) 38 and CSA 70 for its service provision in the western portion of the Valley area. She explains that this area contributes funding that supports the San Antonio Heights Fire Station and that County personnel are concerned about the erosion of that funding source. She reports that City and County Fire personnel and representatives from Supervisor Biane's office are continuing to negotiate and review options for this service but says there has been no resolution to this issue.

Ms. McDonald says that at the hearings on the previous application addressing the larger College Heights island, the Commission admonished the City for not communicating with the property owners and voters in the overall area. She reports that the City took that admonition to heart and held a meeting with the landowners and voters, at which were present representatives from all the major City departments, the project consultant and the City Manager to review the services to be provided and to answer any questions. She says that one property owner at that meeting opposed annexation but she reports that no official protest has been received to date. She says the Commission has been presented with a letter today from a property owner at the corner of Benson Avenue and Arrow Route in favor of the annexation.

Ms. McDonald says the findings required by State law and Commission policy are outlined in the staff report and are made a part of the record by reference herein. She says the staff recommendation is on page one of the staff report and includes that the Commission: (1) take the actions listed related to the environmental assessment of the project; (2) approve LAFCO 2962 with the standard conditions of approval; and (3) adopt LAFCO Resolution No. 2848 setting forth the Commission's findings, determinations and conditions of approval.

Commissioner Sedano asks whether this is just the first bite into the other areas in the College Heights island. Ms. McDonald responds that this is probably the first of many because property owners in various locations in the island area wish to be part of the City and the City is working to package up those applications.

Commissioner Colven asks whether there are any potential solutions resulting from the meetings that have taken place concerning the erosion of funding for CSA 38. Commissioner Biane reports that he has been involved in working with the College Heights and San Antonio Heights communities and he says annexation of the area being discussed today will erode what is already "an upside down situation". He reports that the taxes generated from the College Heights and San Antonio Heights areas barely cover half the cost to keep the San Antonio Heights Fire Station open. He says it has been discussed that San Antonio Heights will need to either impose a tax or contract for services with the City, but he says it is up to the community to decide what it wants to do. He says discussions are ongoing and that there will probably be some resolution in six to twelve months.

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Chairman Biane opens the hearing and calls on those wishing to speak on this item.

Jim Ragsdale, representing the City of Upland, speaks in support of staff recommendation. He says the City has taken steps to work with the property owners in this area and believes it has the concurrence of all but one. Mr. Ragsdale says the City is still working with the one property owner in opposition and is not sure whether or not he will file a protest.

Chairman Biane asks if there is anyone else wishing to speak on this item. There is no one and he closes the hearing.

Commissioner Colven moves approval of staff recommendation, seconded by Commissioner Young. Chairman Biane calls for a voice vote on the motion and it is as follows: Ayes: Bagley, Biane, Colven, Cox, Pearson, Young. Noes: None. Abstain: None. Absent: Williams.

CONSIDERATION OF: (1) FINAL ENVIRONMENTAL IMPACT REPORT ADOPTED BY CITY OF RANCHO CUCAMONGA FOR HENDERSON CREEK PROPERTIES GENERAL PLAN AMENDMENT/ ETIWANDA NORTH SPECIFIC PLAN AMENDMENT/DEVELOPMENT AGREEMENT/TENTATIVE TRACT MAP/ANNEXATION (STATE CLEARINGHOUSE NO. 2003111057), AS CEQA RESPONSIBLE AGENCY FOR LAFCO 2964; (2) ADOPTION OF FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS; AND (3) LAFCO 2964 - REORGANIZATION INCLUDING ANNEXATIONS TO CITY OF RANCHO CUCAMONGA AND WEST VALLEY MOSQUITO AND VECTOR CONTROL DISTRICT (HENDERSON CREEK PROPERTIES--DRC2003-00753) - CONTINUE TO NOVEMBER 17, 2004

LAFCO conducts a public hearing to consider LAFCO 2964, initiated by the City Council of the City of Rancho Cucamonga (hereinafter "the City"), which, as originally submitted, proposed annexation of approximately 101+/- acres to the City. Notice of this hearing has been advertised as required by law through publication in The Sun and the Inland Valley Daily Bulletin, newspapers of general circulation in the area. Individual notice of this hearing was provided to affected and interested agencies, County departments, those individuals requesting mailed notice and landowners and registered voters pursuant to State law and Commission policy.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald shows the annexation area on the map on the powerpoint display. She explains that once the proposal was submitted, it was expanded by LAFCO staff to be processed as a reorganization including annexation to the West Valley Mosquito and Vector Control District (hereinafter "the District") as well as the City, in compliance with the Commission's concurrent annexation policies. She discusses the surrounding land uses, as outlined in the staff report, which include two other areas currently proposed for annexation to the City as LAFCO 2965 (Etiwanda Creek), LAFCO 2970 (Tracy Development). She discusses a map on the powerpoint display which gives an aerial view of the location of LAFCOs 2964, 2965, 2970, and LAFCO 2967 (Richland Pinehurst), a fourth application proposed for annexation to the City. Ms. McDonald says the Henderson Creek project is proposed as a 123 single-family, residential dwelling unit community and that the land use designation assigned by the City through its general plan amendment process is "Residential Low", allowing two to four dwelling units per acre. She says that land use designation has been assigned to 65.3 acres within the study area, with the balance of approximately 35.7 acres designated for open space, utility corridors and flood control. She says the City's Plan for Service outlines the extension of its services to the area and includes a fiscal impact analysis that shows that the revenues to be transferred upon annexation will support the delivery of the City's services. She adds that the West Valley Mosquito and Vector Control District provided a Plan for Service indicating that it will extend its existing assessment to the area upon annexation.

Ms. McDonald says this is a straightforward review from most standards, except for the additional element that the other three pending annexation applications have environmental litigation filed against

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them by the Spirit of the Sage Council and Habitat Trust for Wildlife, Inc. She notes that at the November 17 hearing, the Commission will consider a request submitted by the City for the Commission to waive its environmental litigation policy and proceed to review those annexations while the litigation is being processed. She says no environmental litigation has been filed against the Henderson Creek project and that a copy of the Settlement Agreement reached between Henderson Creek LLP and the Spirit of the Sage and Habitat Trust for Wildlife, Inc., which indicates that 58 acres of mitigation lands will be provided, is attached to the staff report.

(It is noted that Commissioner Williams arrives at 9:35 a.m.)

Ms. McDonald says staff's concern is related to the provisions of conditions of the development agreement and the mitigation monitoring plan which have not been concurred with yet by the City. Another concern she discusses is that if either LAFCO 2965 or 2967 are unsuccessful, an island of unincorporated territory, such as the "Donut Hole", will be created. She says the optimum choice for the Commission would be to consolidate all four applications into a single reorganization, but she explains that the primary landowner for LAFCO 2964 objects to that since this proposal is not affected by the litigation on the other three proposals and he desires that his project be able to proceed. She notes that the Assessor has verified that the area possess 100% landowner consent and is legally uninhabited; and, with the concurrence of the City and the District, staff is recommending that the protest proceedings be waived. She points out that the environmental review documents were presented to the Commission at the October hearing and says the Statement of Overriding Considerations prepared by the Commission's Environmental Consultant Tom Dodson and Associates is attached to the staff report.

Ms. McDonald says the findings required by State law and Commission policy are outlined in the staff report and are made a part of the record by reference herein. She says the staff recommendation is on pages one and two of the staff report and includes that the Commission: (1) take the actions listed related to the environmental review of the project; (2) approve LAFCO 2964 with the standard conditions of approval; (3) waive the protest proceedings, as permitted by Government Code Section 56663(c), with 100% landowner consent and concurrence from the City and the District; and (4) adopt LAFCO Resolution No. 2849 setting forth the Commission's findings, determinations and conditions of approval.

Commissioner Colven asks whether it is a good idea to move forward with this annexation until the litigation issue is settled. Ms. McDonald responds that no litigation has been filed on this project. Chairman Biane points out that this property was being litigated but says a Settlement Agreement came out of that litigation. He notes that Brad Buller from the City and Commissioner Williams, who is a Councilmember, are present, but says he thinks the settlement is contrary to the City's policy regarding mitigation settlements. Ms. McDonald says Mr. Buller can address that, noting that concern was expressed in the staff report about the acceptance of the mitigation lands.

(It is noted that Commissioner Bagley leaves the hearing at 9:40 a.m.)

Chairman Biane opens the public hearing and calls on Brad Buller, City Planner.

Mr. Buller states that the applicant did settle the issue without the participation of the City. However, he says the City has the final say about who ultimately gets the required mitigation land. He says the applicant has been asked to submit information to the City so that the City can make a decision about who will receive the mitigation land; but he says that information has not yet been received. Mr. Buller says the City will move in whatever direction the Commission wishes. He says they are ready to move forward with the annexation but, if the Commission believes that this annexation should be deferred and heard with the other three applications due to the concerns expressed, the City will concur with that decision.

Chairman Biane says this area is within his district and he discusses the North Etiwanda Preserve and the County's open space Improvement Zones OS-1 and OS-3, which he says are run by a public board to protect the open space in perpetuity. He says there are questions as to whether the Spirit of the Sage Council is a non-profit organization; what it will do with the land; and whether they are setting up a trust

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so that the land can be managed in perpetuity. He says there are competing interests and unresolved issues so he would prefer that the Commission hold off on approving this annexation and process all four applications together.

Commissioner Williams says that as a member of the City Council she concurs with Commissioner Biane that the four proposals should be considered together to be sure that the mitigation land goes into the Etiwanda Preserve and is managed properly. She says giving the land to an agency about which there are questions is a concern for the City. Commissioner Colven asks whether considering all four proposals together would expedite a response from the Spirit of the Sage Council as to its intentions for the property. Mr. Buller says that may be an impetus to get them to the table quicker and he notes that a representative of the applicant is present today.

Pam Steele, representing Henderson Creek Properties, reports that the Environmental Impact Report (EIR) was adopted with an addendum, a copy of which was presented to the Commission last month, which modified Mitigation Measure BIO-1 to read, in part, "Prior to recording of the first final map of the project, the property owner shall transfer to the County of San Bernardino Special Districts OS-1 or other qualified conservation entity approved by the City..." Ms. Steele said they had several discussions with City staff about the discussions with the Spirit of the Sage Council and possibly settling rather than going into litigation. She says City staff was supportive of that and it was addressed at the Planning Commission hearing at which the Addendum was approved. She says the Settlement Agreement was presented to the City for its approval since the entity to receive the land must be approved by the City, and it was thought that they had the City's approval since it had been discussed with City staff several times. She says a letter was received from the City a little over a week ago requesting further information, and she says that request for information has been submitted to the Spirit of the Sage Council. She points out that a copy of the non-profit status of Spirit of the Sage was submitted with the original application to the City, but says the City needs additional information about that status. Ms. Steele says she understands the desire to review the four applications at the same time; but she says that since their project is not subject to litigation, they prefer not to be held up by that litigation because they are anxious for their project to move forward.

Chairman Biane says he will ask Mr. Buller back in a few minutes since there seems to be a differing opinion as to whether or not there was an agreement with the City. First, he asks if the Commissioners have any questions of the applicant.

Commissioner Colven comments he hopes Ms. Steele will understand the concerns raised in the staff report about approving this application and then possibly creating another "Donut Hole" if either LAFCO 2965 or LAFCO 2970 are not approved. Ms. Steele responds that approval of their annexation by itself would not create a "Donut Hole". Commissioner Sedano asks whether delaying this annexation will cause a financial burden and how soon the project would be started if annexation is approved today. Ms. Steele responds that it will cause a financial burden because Steve Stewart, the developer, has financial agreements with the purchaser of the property. She says that Mr. Stewart is on his way to the hearing now from Orange County but has been delayed because of the rain.

Commissioner Young comments that he is not clear on what the City's position is.

Mr. Buller says the City supports the annexation and the project as designed and says the only outstanding issue is who will be the recipient of the required mitigation land. He says there was a modification to the conditions of mitigation, as indicated by Ms. Steele, that would have given options for the City to consider as to who ultimately would get the open space mitigation land. Regarding City staff's correspondence with the applicant, Mr. Buller says Larry Henderson (Principal Planner for the City) has stated that he did not support the idea that the land would go to somebody other than the County. He explains that the original language in the conditions provided that the land would go directly to the County; but he says to potentially defer any litigation the applicants requested that the option be included so there would be no delay in discussions at the City Council or Commission level. He says the option was included with the City's knowledge that it has the ultimate authority and final say as to who gets the mitigation land.

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Commissioner Sedano asks what the problem is, since the City has the final say. Chairman Biane says LAFCO's mission is to try to find the most efficient management of land and/or municipal services. He says there are many issues involved out there, noting that he is the Chairman of the Board of the North Etiwanda Preserve which manages these lands. He says they have biologists who look at how these lands should be managed and that other conservation groups do not offer those types of services or assurances to the public that the lands will be maintained properly.

Commissioner Pearson says he appreciates Chairman Biane's comments because he says in reading the EIR, there seems to be concern about who will manage the land and where it will be. He discusses that while this project taken by itself is well thought out and meets the Commission's requirements, the side issues involving the other annexations and the agreement and who will manage the land are of concern. He says he shares Commissioner Sedano's concern about the financial impact on the property owner, who has not arrived yet, and feels he should be allowed to present his case. He says he feels the hearing should be continued in fairness to the City and the developer.

Commissioner Pearson moves that the hearing be continued and discussion follows as to what date it should be continued. Mr. Buller says he questions whether this issue will be resolved in time for the November hearing, since the applicant still needs to respond to the extensive questions asked in the City's October 7 letter. He points out that once the response is received, it must be evaluated and presented to the City Council, so he says a 60-day continuance would probably be better.

Commissioner Young asks how the continuance will affect the project. Ms. McDonald reports that she was going to review with the Commission later that staff was not intending to have a December hearing, which would mean the continuance would be to January 19.

Commissioner Sedano asks Legal Counsel Clark Alsop what his opinion is. Mr. Alsop says this is a policy question for the Commission. He says the Commission has an annexation before it that it can proceed with, at the same timing knowing about three other proposed annexations in this same area that are involved with environmental issues with the Spirit of the Sage Council, which is the same group this project has been involved with. He says the question is whether the Commission wants to review the whole group of projects together to fill in this area or take this annexation separately and look at the others later.

Commissioner Pearson says his motion will be for a continuance to the January hearing. The motion is seconded by Commissioner Colven. Chairman Biane requests that, if this is ready to be heard in November, staff add it on the November agenda. If not, he says this will be heard in January, adding that it is up to the applicant and the City and whether they can move fast enough. Commissioner Pearson says that is his motion, with the possible adjusted hearing date, which he says will be left up to Ms. McDonald to work out. Commissioner Colven, as the seconder, agrees to the amended motion. Chairman Biane calls for a voice vote and it is as follows: Ayes: Biane, Colven, Cox, Pearson, Young, Williams. Noes: None. Abstain: None. Absent: Bagley.

(It is noted that Commissioner Hertzmann arrives at 10:00 a.m.)

Commissioner Sedano states that if he could vote, he would be opposed because he has a real problem with delaying this for the developer. He says he thinks everything will work out and he would like to see the developer be able to do his project. Commissioner Williams says she understands that there is a sale pending, so they are not ready with the bulldozers.

CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 2907; AND (2) LAFCO 2907 - SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE FOR CENTRAL VALLEY FIRE PROTECTION DISTRICT AND CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 2948; AND (2) LAFCO 2948 - SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE FOR COUNTY SERVICE AREA 38 - APPROVE STAFF RECOMMENDATION

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LAFCO considers a withdrawal request submitted by County Fire Chief Peter Hills for service reviews and sphere of influence updates for the Central Valley Fire Protection District (LAFCO 2907) and County Service Area 38 (LAFCO 2948). Notice of this consideration has been advertised as required by law through publication in The Sun, a newspaper of general circulation. Individual notice of this hearing was provided to affected and interested agencies, County departments and those individuals requesting mailed notice.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald states that Chief Hills has submitted this request for withdrawal of these service reviews/sphere updates pending an on-going County Fire study. She says the County is looking at a more comprehensive review to address fire protection in the County overall. She says the staff recommendation is that the Commission accept this withdrawal request.

Chairman Biane asks if there is anyone wishing to speak on this item. There is no one.

Commissioner Young moves approval of staff recommendation, seconded by Commissioner Colven. Chairman Biane calls for a voice vote on the motion and it is as follows: Ayes: Biane, Colven, Cox, Hertzmann, Pearson, Young, Williams. Noes: None. Abstain: None. Absent: Bagley (Hertzmann voting in his stead).

DESIGNATE SPECIAL COUNSEL FOR REPRESENTATION OF COMMISSION FOR LAFCO 2967 - REORGANIZATION INCLUDING ANNEXATIONS TO CITY OF RANCHO CUCAMONGA AND WEST VALLEY MOSQUITO AND VECTOR CONTROL DISTRICT (RICHLAND PINEHURST--DRC2002-00865); LAFCO 2968 - REORGANIZATION INCLUDING CITY OF FONTANA ANNEXATION NO. 161 AND DISSOLUTION OF COUNTY SERVICE AREA 70, IMPROVEMENT ZONE P-9; AND LAFCO 2970 - REORGANIZATION INCLUDING ANNEXATIONS TO CITY OF RANCHO CUCAMONGA AND WEST VALLEY MOSQUITO AND VECTOR CONTROL DISTRICT (TRACY DEVELOPMENT--DRC2003-01051) - APPROVE STAFF RECOMMENDATION

LAFCO considers the designation of Jeffrey Goldfarb of Rutan and Tucker as Special Counsel for two City of Rancho Cucamonga applications (LAFCO 2967-City of Rancho Cucamonga Reorganization et al., Richland Pinehurst and LAFCO 2970-City of Rancho Cucamonga Reorganization et al., Tracy Development) and LAFCO 2968-City of Fontana Reorganization No. 161. Notice of this consideration has been advertised as required by law through publication in The Sun, a newspaper of general circulation. Individual notice of this hearing was provided to affected and interested agencies, County departments and those individuals requesting mailed notice.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald states that Legal Counsel Clark Alsop has declared a conflict on the City of Fontana reorganization proposal since he is a partner in the firm of Best Best and Krieger, which is the City Attorney for the City of Fontana. She says Mr. Alsop's firm is also representing property owners in the environmental litigation on the two City of Rancho Cucamonga reorganization proposals. She says Mr. Goldfarb was contacted about representing the Commission as Special Counsel on these three proposals and indicated that he has no conflicts and is available to represent the Commission. Ms. McDonald states that the staff recommendation is that the Commission retain Mr. Goldfarb as Special Counsel for these three proposals.

Chairman Biane asks if there is anyone wishing to speak on this item. There is no one.

Commissioner Pearson moves approval of staff recommendation, seconded by Commissioner Colven. Chairman Biane calls for a voice vote on the motion and it is as follows: Ayes: Biane, Colven, Cox, Hertzmann, Pearson, Young, Williams. Noes: None. Abstain: None. Absent: Bagley (Hertzmann voting in his stead).

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Chairman Biane announces that he has a conflict on the next item due to campaign contributions received and needs to turn over the Chair to someone else. Ms. McDonald states that the Commission may select another Chair from the regular voters, pointing out that Commissioner Pearson is the last Commissioner present who has served as Chairman. On motion by Commissioner Biane, seconded by Commissioner Williams and unanimously carried, Commissioner Pearson takes over as Chairman.

(It is noted that Commissioner Biane leaves the hearing at 10:05 a.m.)

CONTINUED ITEM:

CONTINUED FROM SEPTEMBER 15, 2004 -- CONSIDERATION OF: (1) ADDENDUM PREPARED AS CEQA RESPONSIBLE AGENCY TO DETERMINE THAT NO SIGNIFICANT CHANGES OR NEW SIGNIFICANT IMPACTS HAVE OCCURRED AND THAT THE FOLLOWING DOCUMENTS PREPARED BY THE CITY OF HESPERIA ARE ADEQUATE FOR USE BY THE COMMISSION, AS CEQA RESPONSIBLE AGENCY FOR LAFCO 2953: NEGATIVE DECLARATION PREPARED FOR OAK HILLS COMMUNITY PLAN PRE-ZONING (ZC-2003-11) AND FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT ADOPTED BY CITY OF HESPERIA FOR OAK HILLS COMMUNITY PLAN (STATE CLEARINGHOUSE NO. 96031031); (2) ADOPTION OF FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS; AND (3) LAFCO 2953 - CITY OF HESPERIA REORGANIZATION NO. 2003-02 INCLUDING ANNEXATIONS TO CITY OF HESPERIA, HESPERIA FIRE PROTECTION DISTRICT, HESPERIA WATER DISTRICT AND HESPERIA RECREATION AND PARK DISTRICT, DETACHMENT FROM COUNTY SERVICE AREA 70, IMPROVEMENT ZONE J, AND DISSOLUTION OF COUNTY SERVICE AREA 70, IMPROVEMENT ZONES R-41 AND R-43 (FREEWAY CORRIDOR) - APPROVE STAFF RECOMMENDATION AS MODIFIED

LAFCO conducts a continued hearing to consider a reorganization proposal which, in its original form, involved the annexation of approximately 2,190 acres to the City of Hesperia (hereinafter "the City"), the Hesperia Fire Protection District and the Hesperia Water District, with detachment from County Service Area 70, Improvement Zone J (hereinafter "CSA 70-J"), annexation of approximately 2,139 acres to the Hesperia Recreation and Park District, and dissolution of County Service Area 70, Improvement Zones R-41 and R-43. This hearing was continued from September 15, 2004. Notice of the original hearing held on July 21, 2004, was advertised in The Sun, the Daily Press and the Hesperia Resorter, newspapers of general circulation in the area. Notice of the July 21 and September 15 hearings was provided to landowners and voters within the reorganization area. Individual notice of all three hearings was also provided to affected and interested agencies, County departments and those individuals requesting mailed notice.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald shows on the powerpoint display a map of the boundaries of the original proposal and says that at the July hearing the two primary concerns expressed by the Commissioners were: (1) the boundaries, given the opposition expressed by the residents; and (2) the question of the future viability of an incorporated community of Oak Hills. Her discussion of each of these concerns is outlined in the staff report. Regarding the boundaries, she discusses that the City met with landowners and residents on August 5, which meeting she also participated in. In the days following the meeting, she says the City staff reviewed the boundaries and notified LAFCO on August 31 that it was requesting modifications to the boundaries to exclude approximately 411 acres, identified on page 4 of the staff report. Ms. McDonald says that last month, the Commission was presented with a letter requesting exclusion from Jose Navarrete who owns a twenty-acre parcel on which he is building a home. She reports that the single parcel surrounding Mr. Navarrete's to the north, east and south has not requested exclusion and she says staff does not support creating another peninsula.

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Ms. McDonald says that at the September 15 hearing, when staff requested a continuance to obtain additional information, the staff report included a modification staff was proposing to exclude the territory of County Service Area 70, Improvement Zone R-43 (hereinafter "CSA70 R-43"). She says that improvement zone was created to address streetlighting and road maintenance as part of the processing and land use approvals for Tract 16272. She explains that staff learned that the interior roads that were to be maintained by CSA 70 R-43 are private roads and she says LAFCO law prohibits the Commission from transferring the maintenance obligation for private roads to a city. She says the City was advised that staff proposed to remove that area from the reorganization because of those problems, but the City and landowner of the tract said they wanted to be sure that area was retained within the boundaries. She discusses that this issue has been resolved through the deeding of the private roads to the County, and says that they now can be transferred to the City so staff no longer opposes annexation of that area.

Ms. McDonald says the original staff report included a condition that the protest proceeding be held in abeyance to allow for the approval of a contract between the County, on behalf of CSA 70-J, and the Hesperia Water District. She says that agreement has been signed, a copy of which is attached to the staff report, and so that condition also has been removed.

Ms. McDonald discusses the issue of the viability of the future incorporation of the community of Oak Hills, noting that a chronology of the Commission's involvement with the Oak Hills community over the past thirty years, including possible incorporation, is attached to the staff report. She reports that in 1994, a feasibility study prepared by a well-known and respected consultant hired by a committee of residents of Oak Hills indicated that incorporation was not viable without the imposition of a per-parcel or per-acre tax to fund the required services. As outlined in the staff report, she discusses that because of changes in State law and Commission policy and financial issues at the State level, the viability of cityhood would be even more difficult now.

Ms. McDonald says the findings required by State law and Commission policy are outlined in the staff report and are made a part of the record by their reference herein. She says the boundaries, even with the modifications of the City to exclude the residential territory, still create great consternation for staff. However, she says the anticipated development by the County and the City through adoption of the Oak Hills Community Plan requires an urban level of services. She summarizes the policy standards of the Commission and State, as outlined in the staff report, which she says point toward the approval of this proposal. Ms. McDonald says the City has complied with all the conditions imposed upon it and has worked with the community over the past ten years on this long process. She says the staff recommendation is outlined on pages one through three of the staff report and includes that the Commission: (1) take the listed actions with respect to the environmental review for this proposal; (2) modify LAFCO 2953 to exclude the areas requested by the City, as listed on page four of the staff report; (3) approve LAFCO 2953, as modified, subject to the conditions listed on pages two and three of the staff report; and (4) adopt LAFCO Resolution No. 2831 reflecting the Commission's findings, determinations and conditions for the modified proposal.

Ms. McDonald reports that the Commission has been presented this morning with a request from a community group, which is present today, for a one-year continuance while it reviews the possible formation of a community services district, as well as an e-mail from Kathy Van Natta indicating her support for a one-year continuance. She says the Commission has also been presented this morning with a letter from Foley & Lardner, Attorneys at Law, representing American Medical Response (hereinafter "AMR"), a provider of advanced life support and emergency ambulance services, related to concerns about the expansion of the City and the Hesperia Fire Protection District (hereinafter "Hesperia FPD") and the impact on exclusive operating areas assigned for ambulance service. She says a copy of the letter was provided to Legal Counsel Clark Alsop and that staff's response is that the exclusive operating areas and 201 rights are determined by the Inland Counties Emergency Medical Authority (ICEMA). She reports that ICEMA reviewed questions regarding the extension of 201 rights regarding the Hesperia FPD in 1991 and adopted a transportation plan indicating how those services are to be provided. She says the Commission's resolution makes no reference to 201 rights because they are not its responsibility. Ms. McDonald says Footnote No. 1 to Foley & Lardner's letter indicates concern about staff "obstructing public participation in the LAFCO process" on behalf of AMR and its attorneys. She

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explains that AMR and ICEMA are notified at the inception of any application since they receive a copy of the Notice of Filing prepared when an application is received. She says they are requested to submit any concerns they may have and she reports that no indication was received about their concerns until receipt of this letter.

Chairman Pearson thanks Ms. McDonald for her very comprehensive presentation. He asks Mr. Alsop whether the Commission needs to discuss a response to this letter. Mr. Alsop says the Commission may respond if it wishes; but he says that, as Ms. McDonald indicated, this is an ICEMA issue over which the Commission has no jurisdiction, and having that on the record is fine.

Chairman Pearson opens the public hearing and calls on those wishing to speak in favor of this proposal.

Supervisor Bill Postmus states that as a member of the Board of ICEMA, along with Commissioners Young and Biane, they will review the 201 rights issue. Supervisor Postmus discusses the reasons he is in support of the City's request to annex the Freeway Corridor. His reasons include that the City has never waived in its intent to annex this Corridor for more than ten years; that LAFCO examined every option for self-governance and concluded in 1994 that cityhood was not financially feasible; and the City withdrew its original application, accepted the sphere for the entire community of Oak Hills and developed the Oak Hills Community Plan (hereinafter "OHCP"). He says the City and County jointly staffed and funded the OHCP; they appointed a Committee of residents and property owners from the Oak Hills area and met with them from 1994 through 2002; and the committee supported the land use plan adopted by the City Council in 2002 and the Board of Supervisors in 2003. He says the OHCP provides for the development of the Freeway Corridor which is crucial to the future economic development of the entire High Desert region; that the OHCP provides for the protection of the rural lifestyle of the Oak Hills residents; and that it took so many years to adopt because of the balance needed to protect the rights and lifestyles of the residents in the Oak Hills community. He says the City's plan maximizes tax revenues to provide for the infrastructure and services needed in the region, while balancing the land issues and preserving the rural lifestyles and character of the Oak Hills community. He says the City's Plan for Service describes how it will provide municipal services to develop the Freeway Corridor. He says his opinion is that the time is right for development that will provide for jobs and services for the growing population of the Victor Valley. He says the City's plan is consistent with the intent of the recent change in the property tax policy adopted by the County which increases the minimum general levy allocated to cities for newly annexed areas to encourage responsible growth. Supervisor Postmus thanks staff for the tremendous amount of work that has been done and urges the Commission to approve this proposal.

Mayor Tad Honeycutt says the City has worked on this annexation for a long time and feels that the issues that the people in the Oak Hills community had have been resolved and that a comprehensive plan has been prepared that will include full municipal services for the area. He says hundreds of developers and business have been looking to move into this area for the past ten years but have been unable to do so and says the City is excited about seeing the Oak Hills area develop to its maximum potential. He encourages the Commission to support this proposal.

Chairman Pearson comments that one issue expressed at the last hearing was concern that the City had not heard all the comments it needed to hear from the people in that area. He notes that it appears that the City has addressed many of those issues but he encourages the members of the City Council to keep its doors open to people who want to comment on issues. Mayor Honeycutt responds that they have open doors and have heard the concerns and feel the City is protecting the rural lifestyle in Oak Hills by adopting the OHCP.

Dennis Nowicki, the longest-tenured Councilmember, says he has been involved in the OHCP process since 1996 and says there have been numerous meetings at the City Council, Board of Supervisors and Advisory Committee levels, noting that the Committee was made up of people from the Oak Hills community. He says the City listened to the people and came up with a Plan that worked for everyone. He says Hesperia's future commercial growth is tied into the I-15 Corridor; that the commercial business will bring wealth to the community; that services such as water, sewer, fire and police protection and

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roads are the result of commercial development; and that the OHCP was designed with an outcome to allow the City to annex the Corridor to benefit the larger area. He explains that the City has resources now and in the future because of the Board of Supervisors' action to increase the property tax percentage the cities receive as a result of annexations, and says that will give them a foundation for infrastructure revenue needed to make that an economically viable area that will serve the City, the Freeway Corridor, and the surrounding Oak Hills area. He says the City has always been sensitive to maintaining a rural lifestyle and says that most of the lot sizes are 2 ½ acres or larger. Mr. Nowicki says the OHCP was agreed to by all involved and that it was part of a process that began under the Commission's direction and control. He asks that the Commission look kindly on the City's application.

City Manager Robb Quincey states that work on this annexation actually started in 1991 to address property owner requests for annexation and to balance competing desires of the residents and property owners in the area. He says the Commission held several hearings on this matter, reviewed cityhood and found that it was not feasible, adding that it probably would not be feasible today. He notes that the feasibility study did not include full police or fire protection services, which he believes led to the conclusion that additional revenues, such as taxes or assessments, would be necessary for feasibility. Mr. Quincey says that in 1994, the City agreed to complete the OHCP and not pursue annexations until the Plan was completed. He discusses that the City is proposing to provide full municipal services to the area, including sewer service which will be available from the north and will be funded by new development and that a sub-regional sewer plant is planned on the west side of the City to benefit the Corridor. He reports that the City and County have completed the agreement to separate the water system. He says the City is committed to develop under the OHCP; that the Freeway Corridor development is crucial for Hesperia's economic future; that limited Freeway Corridor land is available and it will be used for commercial, office and/or suburban uses. He says the time is right for Corridor development to provide needed jobs and services and that the OHCP protects rural areas whether or not they are in the City. Mr. Quincey says the City has completed everything it has promised to do and he requests approval of the annexation.

Dave Reno, Principal Planner for the City, reiterates comments made by previous City representatives. He discusses that the City has consistently asserted its 201 rights through annexations to date and says the City's policy has always been that it can extend its rights to provide for ambulance service in this area. He says they believe the claim by AMR has no merit. He says the City has agreed to accept as City roads those roads in the subdivision discussed earlier by Ms. McDonald. He says after the meeting on August 5 with the landowners, everyone was removed from the boundaries except for Mr. Navarrete. He says Mr. Navarrete's 20 acre parcel will have one house on it, consistent with the OHCP, and he says on the 127 acres surrounding Mr. Navarrete's property the City expects to see a subdivision with 2 ½ acre lots. He says excluding Mr. Navarrete's property would cut a notch into that area and could inhibit that subdivision. Mr. Reno says the City is the logical entity to provide services to this area and has done everything it was supposed to do and requests that the Commission approve this proposal.

Michael Gallagher, a landowner and the developer of the communities of the Oak Ridge Estates, Royal Oaks Estates and Quail Estates comments that it is phenomenal that the City has taken all this time to work with the community and has dedicated resources to the community and has tried to protect the lifestyle of the residents of Oak Hills. He says the City can increase the level of service to homeowners living in the area now and that newcomers to the City will enjoy the City services. He says there is no other feasible alternative for the community and that this annexation will help Hesperia tremendously. He requests that the Commission support this proposal.

(It is noted that Commissioner Williams leaves the hearing at 10:45 a.m.)

Ron Vackar, who owns 170 acres along the Corridor, says he has been a long-time resident of the High Desert; that he started with the Oak Hills community back in the 1970's when he started acquiring property; and that he has been involved in a lot of the proceedings related to this process. He says the City has been very sensitive to the Oak Hills community and that preserving its rural lifestyle was one of the biggest issues in this process. He says the City has worked very closely with many longtime residents of the community and that the OHCP has given the residents their identity. He says the

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Freeway Corridor is very important to the future development of the area and urges that the Commission approve the proposal.

Dan Wurl, Assistant County Fire Chief, says the original staff report talked about County Fire's concerns related to the impact this annexation would have on the erosion of funds for CSA 38. He reports that an agreement has been worked out with the City and says the County is now providing services to the City and the County Fire Department now supports this proposal. He notes that there was some concern about the State Responsibility Area lands and a possible contract with the California Department of Forestry to provide wildland responses, but he reports that those concerns have been mitigated through the contract between the County and the City. Assistant Chief Wurl says he was very pleased to hear Ms. McDonald's comments that ambulance transportation falls under ICEMA's jurisdiction. He says that in ICEMA's 1985 Transportation Plan, there is a statement that any time a city boundary moves, the ambulance provider also moves with it. He points out that since 1985, the Commission has approved annexations to the Cities of Rialto and Hesperia and he says the ambulance service boundaries have moved with those annexations. He asks that the Commission not worry about that issue and submits to the Clerk copies of excerpts from ICEMA's Transportation Plan.

Richard Hall states he appreciates the thorough and in-depth report prepared by Ms. McDonald and says it is gratifying to see such high professionalism. He says infrastructure is critically important to the growth of the Victor Valley area. He says he is a member of the Board of Directors of the Mojave Water Agency, Division 3, and says maintaining the water quality is an important issue. He says a sewer line will go into those areas where there is none which will help maintain the high quality of water they now have. He says septic tanks tend to leak nitrates into the water table, which could become an issue as growth takes place. He says jobs are critical and says this proposal will increase jobs, as well as police and fire protection services, because there will be an increase in revenues available for those services due to annexation of the Corridor. He says annexation will also help the Recreation and Park District to be able to look at issues for community centers, lighting and recreation programs.

Bill Jensen, former City Mayor and Councilman, says this area is within the City's sphere; that it is the City's objective to expand its boundaries to its sphere when it can afford to do so; and that this proposal is the backbone to the beginning of that process. He says eventually roads will be paved and water lines will be placed, but he says that comes incrementally. He says the County has spent \$50,000 and the City has spent \$84,000, which pales in comparison to the thousands of man hours spent and the more than 50 public meetings and hearings that have taken place to get the City this far and to be sure everyone was taken into account. He points out that the City already provides a presence in this area with police patrols, fire protection, and ambulance services, if necessary, and he says sewer is a natural extension to the area. He says the City Council can provide a forum to which the citizens can come locally to discuss their problems. He says institutional financing from the private sector side will not provide the bonding needed for sewer, water and other services in this area because it is too rural an environment. But he says if this area is within the City boundaries, financing would be looked on differently. Mr. Jensen says this annexation is the backbone and "you have to eat the elephant one bite at a time".

Mike Scarano speaking on behalf of AMR, says AMR supports this annexation and appreciates all the hard work that went into it, and he apologizes for raising this issue so late in the game. He says AMR has worked with ICEMA and the County on issues regarding the delivery of ambulance services and the impact on its exclusive operating areas around the County. He says he is pleased to hear staff and Legal Counsel's position that the interpretation of whether 201 rights exist and the scope of those rights are issues under the jurisdiction of ICEMA. He says AMR agrees with that but requests that this position discussed by staff be added to the resolution to be adopted by the Commission. He says AMR trusts that these issues will be resolved, as they have in the past, but thinks it would be appropriate to include that statement in the resolution. Chairman Pearson says that request will be referred to Legal Counsel.

Chairman Pearson calls on those wishing to speak in opposition to this proposal.

Jeff Nelson, a resident in CSA 70 R-41, Quail Summit, and Chairman of the recently formed Oak Hills Citizens Study Committee, says the purpose of their Committee is to determine the feasibility of forming a

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community service district (CSD). He says members of their group met with LAFCO staff last week; that incorporation of the community is not feasible at this time; and they want to look at forming a CSD so the residents can control the decisions of the community. Mr. Nelson says the residents of Oak Hills oppose this annexation because it will damage the integrity of the community. He says the City has repeatedly stated that it is only interested in this Corridor; he points out that he just heard that the Corridor is now the backbone of this annexation and asks if the City will continue to annex areas piece by piece. He says annexation will result long-term in the decline of their rural way of life. He discusses a newspaper article about some residents who wanted a tract with one-acre parcels and says the City started zoning the entire area for one-acre parcels. He discusses their concern about the City's lack of communication with the residents and lack of notice to residents. He says the City did meet with the residents in the annexation area, but he questions how many people in the community who are outside the annexation area are aware of this proposal and what their opinion would be about taking this strip of land out of the Oak Hills community. Mr. Nelson says they just became aware of the CSD option and formed the Committee in the last two weeks and started examining the CSD possibility. He notes they received excellent information from LAFCO staff and says the Commission should be very proud of its staff. He requests that the Commission not approve annexation today and hold its decision in abeyance for a minimum period of 12 months while the Committee looks at the possibility of forming a CSD, which they have been told will take six to nine months before they can actually begin the application process. He says the City mentioned earlier that hundreds of people were wanting to building in this area, but he says if there were that many, there would be some building permits in process. He questions the need for a vote now.

Chairman Pearson says the Committee is a good vehicle to work with staff to see if forming a CSD is feasible or not. He says they should contact Mr. Reno and ask him to keep them informed of any Planning Commission hearings regarding zone changes and says there is a legal process to be followed that requires notification to the public within a certain number of feet surrounding an area proposed for a zone change.

Gary Lewis, a member of the Committee and resident of Oak Hills, supports the Committee's request for a continuance so they can look into forming a CSD. He notes that Commissioner Pearson mentioned at the last hearing that the City has been talking about its great Plan, but that no citizens have showed up at the hearings as proponents of the Plan. Mr. Lewis says there has been a lot of opposition and he notes that the Corridor has no residential opposition because there are no residents in there. He says that as the City has excluded residents with its modifications, this looks like a good deal for the City to develop the Corridor. But he asks how this will eventually affect the residents of Oak Hills and whether this is just the beginning of the gobbling of the elephant. He requests that the Commission delay its vote for one-year so the Committee can have time to examine the CSD option.

Jose Navarrete, a landowner in the area, says he talked to Dave Reno on September 8 and was told that he would recommend that his property be excluded from the annexation. He says he never received an answer to the letter requesting exclusion that he sent to LAFCO, with a copy to the City, except for the information in the staff report he received October 16 indicating that his property was not excluded. He says he did not receive notice of the City's August 5th meeting and was told by Mr. Reno that it was sent to the wrong address. Mr. Navarrete says he was told that the City does not support exclusion of his property because it will create another peninsula of unincorporated territory. He points to the map on the powerpoint display and says the area is already full of peninsulas, so that is not a reason to deny his exclusion. He says the second point made by staff is that the single parcel surrounding his property has not requested exclusion. He points out that the parcel is a vacant lot; but says he is building a house on his property and plans to live there. He says he never received any notice of annexation from the City and says there is a good chance the owner of that parcel is not aware of this annexation. He says staff indicated that his taxes will not change, but he reports that he spoke with a lawyer after the July hearing whose client is suing the City because she was assessed for bonds and lost her property to foreclosure. He says he was told that after the last annexation, property owners were assessed \$50,000 for each acre. He says that means he would pay one million dollars, causing him an extreme financial difficulty and potentially the loss of his home. Mr. Navarrete says the City has done a bad job communicating with

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him and he asks why every other owner except him has been excluded. He says if his property is annexed he will go to the Supreme Court to defend his rights.

George Letts, a landowner, requests that this hearing be continued at least for thirty days. Mr. Letts says he was told last night that many Oak Hills residents were going to show up for this hearing, but he says the community is not being fairly represented today because of the storm. He says the Oak Hills residents and most property owners have always opposed annexation by the City and he notes that, except for one builder in favor, everyone else attending the August 5 meeting was opposed. He reiterates statements made at the July 21st hearing and again outlined in his letter dated July 30, 2004, that was presented to the Commission at last month's hearing, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. He says the City indicated it had officially and legally notified all property owners about annexation but he discusses that the map attached to the survey sent by the City to property owners in June of 2003 about annexation of the Freeway Corridor did not include the area he has highlighted in yellow on the attachment to his letter. He says the City has tried to annex that area in yellow in addition to the Freeway Corridor for ten years so that the area can be rezoned to quarter acre lots and subdivisions could be built and sewers brought to the area. He says to his knowledge the City did not notify anyone that it was submitting for annexation the additional property noted in yellow. Mr. Letts says his property has been excluded from the annexation and he was not notified of that. He says that although there may be a year or two lag time, after annexation the City will want to rezone the 2 ½ acre parcels to quarter acre parcels for subdivisions.

Carole Mathews says they appreciate that their property was excluded from the annexation area. She says she now gets the bigger picture that the Freeway Corridor is the backbone and says the word picture was painted that "you eat the elephant one bite at a time". She says that is what will happen to them because their property is right behind the businesses on the I-15 Freeway.

Chairman Pearson calls for further speakers. There are none and he closes the hearing.

Commissioner Young commends staff for its thorough work and report and commends the citizens and the City who have been working on this project. He says that he is sympathetic to those who have spoken in opposition but does not see any compelling reason not to support staff recommendation. Commissioner Young moves approval of staff recommendation, seconded by Commissioner Hertzmann.

Commissioner Cox says she feels extremely sympathetic to Mr. Navarrete's plight and asks whether there is any recourse for him to request exclusion. Ms. McDonald says he can request reconsideration of the Commission's decision, noting that there is a fee and he must show that there is new information to be presented or information that was not available at the time of the hearing. She says the protest proceeding would be held in abeyance until staff addressed the issues he presented and made a recommendation to the Commission, and the reconsideration process was completed. Commissioner Cox says Mr. Navarrete seems to have a valid point as to the islanding effect displayed in other areas and says she is confused as to why consideration of his exclusion was not duly noted. Ms. McDonald responds that it was noted, stating that he submitted his request to LAFCO staff and that the City's requested modifications did not include his exclusion. She says staff evaluated the inclusion of another peninsula and says the decision was made to make use of a straight roadway along that area. She says if the Commission wishes, it can modify the boundary and exclude him. Commissioner Cox says Mr. Navarrete's case bears consideration. She further comments that in the conclusion of the staff report on page 11, continued concern has been noted by staff about the four-mile strip of City territory separating Oak Hills into separate parts. She asks what the future ramifications of a split in a rural community are. Ms. McDonald responds that staff's concern related to the severing of the Zone J water system. She says that the Special Districts Department and Hesperia Water District staffs have worked on those concerns and have three separate contracts relating to maintaining the integrity of that system.

Commissioner Curatalo discusses that he would like the Commission to consider amending the motion to exclude Mr. Navarrete. He says he respects staff's recommendations but says that in this case, the entire annexation is a peninsula that created questions early in the process. He says he believes annexation is a logical and natural progression for growth and development and will be the best way for

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the citizens to maintain their rural character and achieve an urban expectation for services. He says Mr. Navarrete's exclusion would only represent another sawtooth area within an entire sawtooth area. Ms. McDonald says Mr. Navarrete has made his point and says if the Commission wishes to exclude him, it is true that this annexation already has peninsulas. In answer to inquiry of Commissioner Young, she says his exclusion will have a minimal effect on the whole annexation.

Commissioner Cox expresses support of the annexation, stating that the Freeway Corridor is the gateway to the High Desert and can best be served and developed by the City. However, she says Mr. Navarrete has a compelling argument and she does not think his exclusion would impinge on the development of the Freeway Corridor. Discussion of the reconsideration process follows, with Commissioner Young asking if other landowners will be able to request exclusion, to which Ms. McDonald responds no.

Chairman Pearson asks about the process for the renegotiation of the property tax distribution due to these modifications and whether another modification would cause a delay. Ms. McDonald explains that information has been received and forwarded to the County and the City in preparation for that process and she says she can obtain information on Mr. Navarrete's parcel fairly readily, modify the information and forward it to the parties.

Commissioner Hertzmann says everyone else who wanted to be eliminated from this annexation has been excluded; that they have an ugly peninsula and this exclusion will not be noticed; and that he suggests they modify the boundary.

Commissioner Sedano asks Environmental Consultant Tom Dodson whether he has any comments to add on the pros and cons of this. Mr. Dodson says he does not. He explains the environmental review process that has been undertaken and says there is no physical change to the environment that could result from implementing the annexation.

Mr. Alsop points out that there is a motion and a second for staff recommendation. He says Commissioner Hertzmann spoke about a modification but has not withdrawn his second or requested the maker of the motion to change it. Commissioner Hertzmann requests that the staff recommendation be modified to exclude Mr. Navarrete's parcel. Commissioner Young says that as the maker of the motion, he will accept that modification.

Chairman Pearson calls for a voice vote on the motion as modified and it is as follows: Ayes: Colven, Cox, Hertzmann, Pearson, Young. Noes: None. Abstain: Biane. Absent: Bagley, Williams (Hertzmann voting in her stead),

(It is noted that Commissioner Young leaves the hearing at 11:43 a.m.)

PENDING LEGISLATION

Ms. McDonald states she has no legislative report to present. She says she and Mr. Alsop will attend the CALAFCO Legislative Committee meeting on November 19.

EXECUTIVE OFFICER'S ORAL REPORT

Ms. McDonald reports that there will be a Closed Session at 9:00 a.m. at the November 17 hearing to evaluate her performance as the Executive Officer. She says that also on that agenda will be a service contract for the Lytle Creek North development, the continued consideration of the Henderson Creek annexation, consideration of a request from the City of Rancho Cucamonga that the Commission override its environmental litigation policy for three annexations, the service review for County Service Area SL-1, a confirmation of open space and habitat conservation powers for County Service Area 70, and the initiation of service reviews and sphere of influence updates for the North Desert agencies. She notes

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that the Commission has been presented this morning with the environmental review documents for the Lytle Creek North service contract.

Ms. McDonald announces that there will be no December hearing. She says that on the January 19 agenda will be the final East Valley service review for the San Bernardino Valley Water Conservation District, three annexations to the City of Rancho Cucamonga, if the Commission overrides its environmental litigation policy, one annexation to the City of Fontana, and possibly service contracts for the East Valley Water District and the City of Redlands.

Ms. McDonald reports that the quarterly report indicated that as of October 6, eleven proposals for jurisdictional change had been received. She says that number is up to 13 now and she knows of four more applications that will be coming any time. She reports that she is working with two other groups, one from the Phelan/Pinon Hills community and one from the Helendale/Silverlakes community, who are looking to form community services districts. She reports she and Commissioner Bagley toured the Mojave Desert by bus as part of the Mojave Desert Resource Conservation District's Fall Tour. She says the Commission will be presented with a proposal to form a county service area to consolidate CSA 70 Improvement Zones OS-1 and OS-3. Commissioner Sedano asks how the office is set for staff with all the additional work. Ms. McDonald responds that with the initiation of the North Desert service reviews next month, there will be a request for a request for proposal for a consultant to gather information for service reviews and to work with the Districts. She says she hates to make a commitment to a full-time staff person, but says they may need to add an Analyst. Commissioner Hertzmann asks about using temporary help. Ms. McDonald says temporary help is used for getting out large notifications.

COMMISSIONER COMMENTS

Chairman Pearson calls for comments from Commissioners. There are none.

COMMENTS FROM THE PUBLIC

Chairman Pearson calls for comments from the public. There are none.

**THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE HEARING IS
ADJOURNED AT 11:55 A.M.**

ATTEST:

DEBBY CHAMBERLIN
Clerk to the Commission

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JIM BAGLEY, Chairman